

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

VINCENT RODRIGUEZ, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

GREGORY CUTCHALL,
Individually, and GC PIZZA LLC,
doing business as Domino's Pizza,

Defendants.

4:20-CV-3106

ORDER TO SHOW CAUSE

The defendant filed a suggestion of death on June 2, 2022, informing the plaintiff and the Court of the death of defendant Gregory Cutchall. [Filing 130](#). Pursuant to [Fed. R. Civ. P. 25\(a\)\(1\)](#), when a party dies, a motion for substitution may be made by any party or the decedent's representative, but "[i]f the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed."

No timely motion for substitution has been made in this case. But while Rule 25(a)(1) appears to be mandatory, the Court may "exercise its discretion to permit a motion for substitution beyond the time originally prescribed when the failure to file the motion was the result of excusable neglect." *Kaubisch v. Weber*, 408 F.3d 540, 542 (8th Cir. 2005) (citing [Fed. R. Civ. P. 6\(b\)](#)); accord *Pierce by Guardian v. Pemiscot Mem'l Health Sys.* 657 F. App'x 613, 615 (8th Cir. 2016). Accordingly,

IT IS ORDERED:

1. On or before September 13, 2022, the plaintiff may show cause why his claims against Gregory Cutchall should not be dismissed, by filing a motion for substitution supported by a showing of excusable neglect for untimely filing.

2. In the absence of such a showing, the plaintiff's claims against Cutchall will be dismissed without further notice.
3. The Clerk of the Court shall set a show cause deadline for September 13, 2022.

Dated this 6th day of September, 2022.

BY THE COURT:


John M. Gerrard

United States District Judge